OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 1 DATE: 06/30/93

RE: Shieh, L

vs.

S.c.l.a.

Christopher, Warren

2 Civil BO74286

Los Angeles No. BC054981

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

B074286

(Super. Ct. NO.054981)

L. SHIEH,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

WARREN CHRISTOPHER et al.,

Real parties in Interest.

ORIGINAL PROCEEDING; Petition for Writ of Mandate.

Writ Denied.

Guy Rollins and James L. Andion for Petitioner.

No Appearance for Respondent.

Gibson, Dunn & Crutcher and William Highberger for Real Parties in

Interest.

INTRODUCTION

On April 2, 1993, this court issued an order requiring petitioner and his counsel, Guy Rollins, to show cause before this court at 9: 00 a.m. on May 25, 1993, why sanctions should not be imposed for filing the petition for a writ of mandate or prohibition in this matter. Neither petitioner nor Mr. Rollins saw fit to appear on May 25, although different counsel, James L. Andion, did file a written response on behalf of petitioner. We hold the petition was frivolous and impose sanctions of $5,000 each against petitioner and Mr. Rollins, separately and individually.

FACTUAL BACKGROUND

In November 1992, counsel for petitioner filed a motion to disqualify Judge Edward Y. Kakita for cause; Judge Kakita did not respond. On December 17, 1992 petitioner himself filed a statement of disqualification in which he complained that Judge Kakita "has completely ignored the facts and law, and has destroyed my cases and career" and detailed how Judge Kakita's adverse rulings demonstrate that he has conspired and continues to conspire with defendants (who include more than 340 general partmers of 2 law firms) against petitioner. According to petitioner, Judge Kakita would be a witness to testify as to how all the Caucasian lawyers and judges were conspiring against Shieh. Judge Kakita filed a reply to this challenge, commenting that the charges were

"outrageous."

On January 11, 1993, petitioner filed a third disqualification of Judge Kakita. On January 20, Judge Kakita ordered this document stricken, finding it was repetitive of two prior motions for disqualification.

On February 26, 1993, the Hon. Ted Millard, Assistant Presiding Judge of the Orange Courty Superior Court, sitting by assignment, denied the motions to disqualify Judge Kakita. In Judge Millard's words, "[t]his tripartite challenge to Judge Kakita is but one of many such challenges against different state and federal trial court judges that have made rulings that are not to Mr. Shieh's liking." The judge assigned to hear one of these challenges termed it "'wholly frivolous and a sham,' as well as describing Mr.

Shieh as being 'vexatious.' That ruling was made on or about June 17, 1992, and can best be described as an understatement. Mr. Shieh is a vexatious litigant whose campaign of litigation terror appears to be to accuse nearly every judge who has ever ruled against him of being 'biased' or a 'racist.'" Upon denying the challenges, Judge Millard ordered that petitioner and any of his counsel must first seek and obtain leave from the presiding judge, upon a showing of good cause, to file any further challenges for cause against Judge Kakita.

Petitioner challenged this order by seeking a writ of mandate; that petition was denied by Division Two of this court in Shieh v. Superior Court (B073924, March 24, 1993); a petition for review was denied on April 21, 1993. On March 30, 1993, counsel

for petitioner filed another petition for a writ of mandate or prohibition, again challenging Judge Millard's order.

DISCUSSION

Petitioner and his counsel are doing nothing with this second petition but seeking a second bite of the apple. This is the worst sort of forum shopping. Not only is this petition repetitive, but it is untimely. Judge Millard's order of February 26, 1993 was served by mail on March 4. Petitioner thus had ten days (plus five days for mail service) in which to file the instant petition. (Code Civ. Proc., Section 170.3, subd. (d), 1013, subd. (a).) This requirement is absolute and inflexible. (Guedalia v. Superior Court (1989) 211 Cal. App. 3d

1156, 1159-1160, review den. Aug. 31, 1989.) Accordingly, the instant petition, filed on March 30, 1993, necessarily was untimely notwithstanding petitioner's request for clarification and reconsideration of Judge Millard's ruling.

The instant writ petition undeniably is frivolous. No attorney reasonably could have believed either that the purported "new facts" recited in this petition are anything of the sort or that it was timely filed. Petitioner is himself an attorney and thus must be held equally culpable with the counsel he selected to represent him in this matter. Moreover, this is part of a pattern of repeatedly relitigating the same issue, as evidenced by petitioner's extensive history in the trial and appellate courts, during which his actions

repeatedly have been characterized as frivolous and he repeatedly has been denominated a vexatious litigant. Finally, given how well settled the timeliness proposition is, there can be no reason for having filed the instant petition other than to cause respondents further unnecessary delay and expense. This "classic" instance meets both the subjective and the objective standards of In re Marriage of Flaherty (1982) 31 Cal. 3d 637, 649-650.

The petition for writ of mandate is denied. Sanctions are awarded against petitioner and Guy Rollins, individually and separately, in the sum of $5,000 each. The sanctions are to be paid to counsel for real parties in interest within 10 days.

NOT TO BE PUBLISHED

SPENCER,

P.J.

I concur:

ORTEGA, J.